

Assembly Bill 3101 (Elections Committee)
Political Reform Act: Voluntary Expenditure Limits
Version: Amended, April 27, 2004
Status: Passed Assembly Elections to Appropriations

Executive Summary

Under current law, a candidate for elective state office may not change his or her acceptance or rejection of voluntary expenditure limits more than twice after the deadline for filing nomination papers for that election. AB 3101 would instead provide that a candidate may not change this decision more than twice after filing of his or her statement of intention to be a candidate.

Recommendation

Staff recommends that the Commission adopt a position of support.

Background

Proposition 34 created voluntary expenditure limits for candidates for elective state office. Under section 85401, state candidates must accept or reject these limits at the time they file their statement of intention to be a candidate (Form 501). A candidate who accepts the voluntary expenditure limits is designated in the ballot pamphlet and may purchase space for a statement.

Under section 85402 and regulation 18542, a candidate who contributes personal funds to his or her campaign in excess of the limits must amend the Form 501 and notify the Secretary of State within 24 hours. At that point, any opponent who accepted the limits is no longer bound by them. Section 85401 also allows a candidate who rejected the limits in the primary election to accept the limits for the general election, as long as he or she did not exceed these limits in the primary.

AB 1501, a bill signed into law in January 2004, amended section 85401 to allow state candidates to change their acceptance or rejection of voluntary expenditure limits until the filing of nomination papers (usually 88 days before an election). The bill also prohibited a candidate from changing his or her statement more than twice after initial filing of nomination papers.

AB 1501 was intended to provide candidates with additional flexibility when deciding whether to accept voluntary expenditure limits. The bill's author had expressed concern that the early filing of the Form 501 (prior to raising or spending campaign funds) could discourage candidates from accepting voluntary expenditure limits, as they could be uncertain of the number and quality of opponents at the time of filing.

In his signing message for AB 1501, Governor Schwarzenegger indicated, "The intent of the legislation is to prohibit the candidate from changing his or her statement of acceptance or rejection of voluntary campaign spending limits no more than twice after the filing of the statement of intention and prior to the deadline for filing the nomination papers. However, as drafted, the bill references the initial filing of the nomination papers rather than the statement of intention. I sign this bill with the understanding that the author intends to clarify his intent with subsequent legislation."

Analysis

AB 3101 was introduced to address concerns raised by the Governor when he signed AB 1501 into law. The bill makes two changes to section 85401. The section currently reads as follows:

“(a) Each candidate for elective state office shall file a statement of acceptance or rejection of the voluntary expenditure limits set forth in Section 85400 at the time he or she files the statement of intention specified in Section 85200.

“(b) A candidate may, until the deadline for filing nomination papers set forth in Section 8020 of the Elections Code, change his or her statement of acceptance or rejection of voluntary expenditure limits provided he or she has not exceeded the voluntary expenditure limits. A candidate may not change his or her statement of acceptance or rejection of voluntary expenditure limits more than twice after the initial filing of nomination papers for that election and office.

“(c) Any candidate for elective state office who declined to accept the voluntary expenditure limits but who nevertheless does not exceed the limits in the primary, special primary, or special election, may file a statement of acceptance of the expenditure limits for a general or special runoff election within 14 days following the primary, special primary, or special election.”

As seen in the underlined portions of the section, the second sentence of subdivision (b) erroneously refers to a candidate amending his or her statement *after* the filing of nomination papers, an act which is prohibited in the first sentence of the subdivision.

AB 3101 corrects this mistake by indicating the form may be amended twice after filing the statement of intention to be a candidate. The bill would modify subdivision (b) as follows:

“(b) A candidate may, until the deadline for filing nomination papers set forth in Section 8020 of the Elections Code, change his or her statement of acceptance or rejection of voluntary expenditure limits provided he or she has not exceeded the voluntary expenditure limits. A candidate may not change his or her statement of acceptance or rejection of voluntary expenditure limits more than twice after the *candidate's* initial filing of ~~nomination papers~~ *the statement of intention* for that election and office.”

AB 3101 also addresses concerns raised by the Sacramento Superior Court's ruling in the *Evans v. FPPC* and *Walters v. FPPC* matters. Because the Superior Court based its decision on the general amendment provision contained in 81004.5,¹ section 85401 could remain open to the construction that 81004.5 provides a method of amendment outside the limited circumstances of section 85401.

¹ “§ 81004.5. Reports and Statements; Amendments. Any report or statement filed pursuant to this title may be amended by the filer at any time. Amending an incorrect or incomplete report or statement may be considered as evidence of good faith.”

In response to this concern, AB 3101 would add the following subdivision to section 85401:

“(d) Notwithstanding Section 81004.5 or any other provision of this title, a candidate may not change his or her statement of acceptance or rejection of voluntary expenditure limits other than as provided for by this section and Section 85402.”

Staff believes that this language will protect the provisions currently in place in sections 85401 and 85402 and reduce instances of candidates trying to amend their acceptance or rejection of expenditure limits after the deadline.